Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Declaratory Ruling to Clarify	)	WT Docket No. 08-165
Provisions of Section 332(c)(7)(B) to Ensure	)	
Timely Siting Review and to Preempt Under	)	
Section 253 State and Local Ordinances that	)	
Classify All Wireless Siting Proposals as	)	
Requiring a Variance	)	
	)	

ORDER ON RECONSIDERATION

Adopted: August 3, 2010 **Released: August 4, 2010**

By the Commission:

I. INTRODUCTION

1. Last November, the Commission in a Declaratory Ruling established timeframes for State and local governments to act on wireless facility siting applications. Five organizations representing local governments requested that we reconsider a portion of that ruling relating to the suspension of these time periods when an application is incomplete as filed. Today, we reaffirm our decision that the timeframes – 90 days for collocations and 150 days for other wireless facility siting applications – are automatically tolled only when the reviewing government notifies the applicant of the incompleteness within the first 30 days after receipt. In so doing, we promote the timely deployment of innovative broadband and other wireless services while preserving the legitimate authority of State and local governments, in furtherance of the goals of our initial decision and consistent with the recommendations of the National Broadband Plan.

II. BACKGROUND

2. On July 11, 2008, CTIA–The Wireless Association® (CTIA) filed a petition requesting that the Commission issue a declaratory ruling clarifying the provisions of the Communications Act that provide for State and local review of personal wireless facility siting applications.[1] Principally, CTIA sought clarification of provisions in Section 332(c)(7) of the Communications Act that it contended were ambiguous and had been interpreted in a manner that allowed zoning authorities to impose unreasonable impediments to wireless facility siting and the provision of wireless services.

[1] In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, *Petition for Declaratory Ruling* of CTIA–The Wireless Association®, WT Docket No. 08-165, filed July 11, 2008 (CTIA Petition).

3. Section 332(c)(7) of the Communications Act generally preserves State and local authority over wireless facility siting, while also placing important limitations on that authority. Section 332(c)(7)(B)(ii) states that State or local governments must act on requests for personal wireless service facility sitings "within a reasonable period of time."[2] Section 332(c)(7)(B)(v) provides that "[a]ny person adversely affected by any final action or failure to act" by a State or local government on a personal wireless service facility siting application "may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction."[3]

4. On August 14, 2008, the Wireless Telecommunications Bureau (WTB) requested comment on the Petition.[4] Hundreds of comments and replies were filed in response to WTB's *Public Notice*, including comments from wireless service providers, tower owners, local and State government entities, and airport authorities.[5] In the Commission's *Ruling*,[6] in response to record evidence of "lengthy and unreasonable delays" involving zoning authority review of tower and antenna siting applications,[7] the Commission, among other things, clarified provisions of Section 332(c)(7) relating to the timeliness of action on these applications.[8] The Commission found that unreasonable delays in a significant number of cases had obstructed the provision of wireless services.[9] Such delays, the Commission concluded, impede advances in coverage, deployment of advanced wireless communications services, and competition that Congress has deemed critical.[10]

5. To address these findings, the Commission interpreted what constitutes a "reasonable period of time" and a "failure to act" under Section 332(c)(7) of the Communications Act. The Commission found that 90 days for processing collocation applications and 150 days for processing applications other than collocations are generally reasonable timeframes.[11] The Commission further determined that failure to meet the applicable timeframe presumptively constitutes a failure to act under Section 332(c)(7)(B)(v), enabling an applicant to pursue judicial relief within the next 30 days.[12] The Commission defined these time periods as rebuttable presumptions and acknowledged that more time may be needed in individual

[2] 47 U.S.C. § 332(c)(7)(B)(ii).

[3] 47 U.S.C. § 332(c)(7)(B)(v). *See also Ruling*, 24 FCC Rcd at 14008-10 ¶¶ 37-42.

[4] Wireless Telecommunications Bureau Seeks Comment On Petition For Declaratory Ruling By CTIA–The Wireless Association® To Clarify Provisions Of Section 332(c)(7)(B) To Ensure Timely Siting Review And To Preempt Under Section 253 State And Local Ordinances That Classify All Wireless Siting Proposals As Requiring A Variance, WT Docket No. 08-165, *Public Notice*, 23 FCC Rcd 12198 (WTB 2008) (*Public Notice*).

[5] *See generally* WT Docket No. 08-165.

[6] In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, WT Docket No. 08-165, *Declaratory Ruling*, 24 FCC Rcd 13994 (2009) (*Ruling*).

[7] *Ruling*, 24 FCC Rcd at 14004-06 ¶¶ 32-33.

[8] *See* 47 U.S.C. § 332(c)(7)(B)(ii),(v); *see also Ruling*, 24 FCC Rcd at 14010-15 ¶¶ 43-53. The Commission also found that it is a violation of Section 332(c)(7)(B)(i)(II) of the Communications Act for a State or local government to deny a personal wireless service facility siting application because service is available from another provider. *See id.* at 14015-19 ¶¶ 54-65. In addition, the Commission denied a request to find that a State or local regulation that requires a variance or waiver for every wireless facility siting violates Section 253(a) of the Communications Act. *See id.* at 14019-20 ¶¶ 66-67.

[9] *Id*. at 14005-06 ¶¶ 33-34.

[10] *Id*. at 14007-08 ¶ 35.

[11] *See Ruling*, 24 FCC Rcd at 14012 ¶ 45.

[12] *See id.*; *see also* 47 U.S.C. § 332(c)(7)(B)(v).

cases.[13] In particular, in the event an applicant pursues a judicial remedy, the Commission stated that the State or local authority has the opportunity to rebut the presumption that a delay was unreasonable.[14] Ultimately, the Commission stated, the court in each case will find whether the delay was in fact unreasonable under the circumstances of the case.[15] Thus, the Commission's *Ruling* reduces delays in the construction and improvement of wireless networks while preserving the authority of States and localities to make the ultimate determination on local zoning and land use policies.

6. The Commission also defined certain circumstances that would warrant adjustments to the presumptive deadlines, including when the applicant fails to submit a complete application or to file necessary additional information in a timely manner.[16] Specifically, the Commission stated that "when applications are incomplete as filed, the timeframes do not include the time that applicants take to respond to State and local governments' requests for additional information."[17] This automatic tolling, however, applies only if a zoning authority notifies an applicant within the first 30 days that its application is incomplete.[18] The Commission concluded that allowing for such tolling balances the need for a State or local government to have sufficient time to review an application for completeness with the interests of the applicant against a last-minute decision finding its application incomplete.[19] In addition, the Commission clarified that the presumptive deadlines for acting on siting applications could be extended beyond 90 or 150 days by mutual consent, and that such agreements serve to toll the commencement of the 30-day period for filing suit.[20]

7. On December 17, 2009, a Petition for Reconsideration or Clarification ("Petition") was filed by the National Association of Telecommunications Officers and Advisors, the United States Conference of Mayors, the National League of Cities, the National Association of Counties, and the American Planning Association ("Petitioners").[21] In their Petition:

> Petitioners seek reconsideration and clarification of the 30 day incompleteness deadline on both legal and policy grounds. First, the Commission exceeded its interpretation of its authority under Section 332(c)(7) in implementing a 30 day review for completeness deadline because the 30 day incompleteness deadline imposes additional limitations on personal wireless service facility siting

[13] *See, e.g., Ruling*, 24 FCC Rcd at 14004-05, 14010, 14011 ¶¶ 32, 42, 44.

[14] *See id*. at 14004-05 ¶ 32.

[15] *See id*. at 13995 ¶ 4.

[16] *See id*. at 14010 ¶ 42.

[17] *Id.* at 14014 ¶ 52.

[18] *Id*. at 14014-15 ¶ 53.

[19] *See id*.

[20] *See id*. at 14013 ¶ 49.

[21] In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, *Petition for Reconsideration or Clarification* of the National Association of Telecommunications Officers and Advisors, the United States Conference of Mayors, the National League of Cities, the National Association of Counties, and the American Planning Association, WT Docket No. 08-165, filed Dec. 17, 2009. Also on December 17, 2009, Petitioners filed an Emergency Motion for Stay pending Commission action on their petition. In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, *Emergency Motion for Stay* of the National Association of Telecommunications Officers and Advisors, the United States Conference of Mayors, the National League of Cities, the National Association of Counties, and the American Planning Association, WT Docket No. 08-165, filed Dec. 17, 2009. On January 29, 2010, WTB denied this Stay Request. *Order*, 25 FCC Rcd 1215 (WTB 2010).

process beyond those stated in Section 332(c)(7). Second, the ability to toll the shot clock must extend to valid reasons beyond the facial incompleteness of the application. Third, the 30 day review period does not reflect the realities of the zoning application process and will result in significant problems for local governments and applicants across the nation and could result in unnecessary litigation and/or siting delays unless modified. Fourth, the rule should be reconsidered based on input received by interested parties because the 30 day completeness rule was developed without public notice and without prior discussions with many interested parties.[22]

Petitioners further state that while they do not agree with the Commission's interpretation of its authority under Section 332 of the Act, the Petition does not challenge that interpretation.[23] The Commission issued a Public Notice on December 23, 2009, asking for comments in response to the Petition on or before January 22, 2010, and reply comments on or before February 8, 2010.[24] The Commission received a total of 21 comments, oppositions and replies in response to the Petition.[25]

8. On January 12, 2010, the City of Arlington, Texas, filed a petition for review in the United States Court of Appeals for the Fifth Circuit arguing, *inter alia,* that the Ruling generally exceeds the Commission's authority.[26] On February 19, 2010, the Commission filed a motion to hold the case in abeyance pending a decision on the Petition for Reconsideration. The City of Arlington, NATOA *et al.*, and other local government representatives opposed the motion. On March 4, 2010, the Court of Appeals granted the Commission's motion.[27]

III. DISCUSSION

A. Legal Authority to Impose a 30-Day Period for the Automatic Triggering of Tolling

9. Petitioners first contend that the Commission exceeded its own interpretation of its authority under Section 332(c)(7) of the Act.[28] In the *Ruling*, the Commission found that while Congress intended "to preclude the Commission from maintaining a rulemaking proceeding to impose additional limitations on the personal wireless service facility siting process beyond those stated in Section 332(c)(7)," the Commission retains the authority to interpret the limitations that Congress imposed in Section 332(c)(7).[29] Nevertheless, Petitioners argue, by allowing State and local governments to toll the timeframe for acting on an application only within 30 days after the application is filed, the Commission created an internal deadline for completeness of an application; and because this deadline is not contained within the

[22] Petition at 4.

[23] *See* Petition at 2.

[24] Wireless Telecommunications Bureau Seeks Comment on Petition for Reconsideration or Clarification of the Commission's Declaratory Ruling Clarifying Provisions in Section 332(c) of the Communications Act, WT Docket No. 08-165, *Public Notice*, 24 FCC Rcd 14703 (WTB 2009). Reply comments were not actually required to be filed until February 12, 2010, due to federal government snow closures.

[25] Commenters are listed in the Appendix.

[26] *City of Arlington v. FCC*, No. 10-60039 (5th Cir. filed Jan. 12, 2010).

[27] *City of Arlington v. FCC*, No. 10-60039 (5th Cir. order issued March 4, 2010).

[28] Petition at 4.

[29] *Ruling*, 24 FCC Rcd at 14002 ¶ 25. The Commission was interpreting the Conference Report on the Telecommunications Act, which provides that "[a]ny pending Commission rulemaking concerning the preemption of local zoning authority over the placement, construction or modification of CM[R]S facilities should be terminated." H.R. Conf. Rep. No. 104-458, 104th Congress, 2nd Sess. 208 (1996).

Communications Act, petitioners claim, it constitutes a "new limitation" on State and local governments in violation of the Commission's interpretation of its own authority.[30]

10. We disagree with Petitioners' argument that by defining the period within which the timeframe for acting on an application may be tolled automatically, the Commission established a new limitation on State and local governments that was not within the statute. The Commission determined that the timeframe may be tolled due to an application's incompleteness, and then specified the circumstances under which this tolling may occur, in order to define how the 90- and 150-day time periods established in the *Ruling* are to be counted in interpreting "a reasonable period of time." In other words, both the tolling provision and the conditions for its application address to what extent "a reasonable period of time" includes or excludes the time for completing an application upon notification by the State or local government. The period for tolling is an integral part of the Commission's interpretation of what constitutes a "reasonable period of time," and thus is consistent with the Commission's interpretation of its statutory authority.

11. Moreover, the Commission is under no statutory obligation to adopt any provision for automatic tolling of the presumptively reasonable time periods. Petitioners argue that the specification of a time period for automatic tolling is a "new limitation" on State and local governments, and that the absence of such a period would allow a State or local government to unilaterally toll the applicable timeframe at any point in the process. However, the Commission would have been within its discretion to define a "reasonable period of time" without allowing for any automatic tolling. The Commission included the automatic tolling provision to address concerns raised by State and local governments in their comments.[31] CTIA's Petition proposed firm timeframes and did not contemplate any circumstances under which those timeframes would be tolled.[32]

12. In addition, we note that although Petitioners assume for the purposes of their Petition that the Commission has the authority to interpret what is a "reasonable period of time," their challenge to the tolling period undercuts this assumption. Were State and local governments able unilaterally to toll the decisionmaking period at any time, the Commission's authority to define the presumptively reasonable period in which the statute requires them to act, which Petitioners assert they are not challenging here, would be rendered meaningless.

B. Policy Considerations for the 30-Day Limitation on the Automatic Triggering of Tolling

13. In addition to their legal argument against the 30-day limitation on the automatic triggering of tolling, Petitioners offer three policy arguments for modifying this limitation. First, Petitioners argue that there are legitimate reasons for tolling the applicable shot clock period that the *Ruling* does not address.[33] Petitioners note that sometimes, local governments must get approval or other information from governmental or quasi-governmental entities, such as the Federal Aviation Administration (FAA), Federal or State environmental authorities, and power utilities, before an application can be approved, and that the local government has no control over the time it takes for these entities to complete their review processes.[34] Petitioners contend that under such circumstances, the applications are not "incomplete," nor

[30] *See* Petition at 5. Government entities that commented on Petitioners' legal argument that the 30-day period exceeded the Commission's interpretation of its own authority uniformly supported Petitioners' analysis. *See*, *e.g.*, Los Angeles Comments at 2; San Antonio Comments at 2; Philadelphia Comments at 2; Livonia Comments at 2.

[31] *See Ruling*, 24 FCC Rcd at 14014 ¶ 52, n.155.

[32] *See generally*, CTIA Petition at 24-27.

[33] *See* Petition at 6.

[34] *See id*.; Mentor Comments at 2-3; Fairfax Reply Comments at 4.

is the local authority at fault for the delay.[35] Petitioners also argue that in some instances, the applicant's action or inaction in completing obligations related to the review process can prevent that process from being completed within the applicable time period.[36] As an example, Petitioners note that many jurisdictions require the applicant to follow publication and notice requirements before public hearings are convened on a zoning application. Petitioners state that if the applicant makes a mistake in this process, the local government has no legal power to proceed with the hearing.[37]

14. Second, Petitoners predict that the 30-day tolling period will cause various undesirable changes in the way zoning authorities process tower siting applications. They contend that when areas of concern become known after the 30-day period for tolling has passed, many State and local governments will now deny the applications because they will have insufficient time to engage in necessary follow-up exchanges and modifications.[38] In addition, because State and local governments will not want to find themselves in need of additional information after the 30-day period for tolling has lapsed, they will be forced to adhere to rigid application processes instead of the more informal zoning processes that are used for other types of applications.[39] Further, many State and local governments will seek additional information in the initial filing, even though such information would be unnecessary for most applications.[40] Petitioners also express concern that in some instances, rather than face the risk and expense of litigation, a zoning authority with limited resources may grant an application that it could not process within the 90- or 150-day timeframe due to a delay caused by the applicant or a third party, even though the State or local government would likely prevail on the merits.[41]

15. Third, Petitioners argue that due process and fairness require that the rule be reconsidered because the 30-day completeness rule was not contained in CTIA's Petition for Declaratory Ruling, and was developed without public notice and without prior discussions with interested parties.[42] Petitioners clarify in their Reply that they take no position on whether the Commission's decision to create a 30-day period for automatically triggering tolling violated the Administrative Procedure Act; rather, their concern is that the absence of a full record allegedly created unintended consequences.[43]

16. We find Petitioners' policy arguments unpersuasive. Fundamentally, the concerns Petitioners assert are addressed by the framework established in the *Ruling*. In particular, the *Ruling* provides both that the parties may agree to extend the presumptive deadline,[44] and that the reasonableness of delay in any case shall be considered by the court.[45] Thus, a State or local government may seek a tolling

[35] *See* Petition at 6.

[36] *See id*. at 7.

[37] *See id*. *See also* GMTC Comments at 3-4.

[38] *See id.* at 7-8. *See also*, *e.g.*, Portland Comments at 4; Albuquerque Comments at 2; Philadelphia Comments at 4-5.

[39] *See* Petition at 8-9. *See also* Hoffmann Estates Comments at 4-5.

[40] *See* Petition at 8-9.

[41] *See* Petition at 7.

[42] *See* Petition at 10. *See also* Albuquerque Comments at 3; Fairfax Reply Comments at 2.

[43] Petitioners Reply Comments at 4.

[44] *See Ruling*, 24 FCC Rcd at 14013 ¶ 49 ("a 'reasonable period of time' may be extended beyond 90 or 150 days by mutual consent of the personal wireless service provider and the State or local government, and . . . in such instances, the commencement of the 30-day period for filing suit will be tolled").

[45] *See id*. at 14010 ¶ 42 ("the State or local authority will have the opportunity, in any given case that comes before a court, to rebut the presumption that the established timeframes are reasonable.").

agreement with the applicant when a delay outside the control of the State or local government occurs, either due to the applicant or to a third party. Similarly, the State or local government may request extension of the review period when it needs to ask an applicant for additional information or analysis after the 30-day period for automatically triggering tolling has passed. Should an applicant refuse and instead take the matter to court, the court will be able to consider whether and to what extent the particular circumstances justify a determination that "a reasonable period of time" under the statute is longer than the presumptively reasonable 90- or 150-day period. A court may conclude, for example, that a local government's request for additional information on Day 40 that the applicant did not fully answer until Day 145 was reasonable and warrants a longer "reasonable period of time" than the presumptive deadline provides. Thus, applicants "will have the incentive to resolve legitimate issues raised by State or local governments within the timeframes defined as reasonable, or they will incur the costs of litigation and may face additional delay if the court determines that additional time was, in fact, reasonable under the circumstances."[46]

17. For similar reasons, we are unpersuaded that State and local governments will find it necessary to adopt rigidly formal review processes, or to require unnecessary information as part of the application, in response to the 30-day period for automatically triggering tolling. As discussed above, the regime described in the *Ruling* incorporates flexibility to address unanticipated situations. Given this flexibility, we expect that governments and applicants alike will recognize the costs of unnecessarily formal procedures and avoid them where possible. Similarly, all parties will have incentives to avoid the uncertainty of litigation that may result from the unnecessary denial of an application.[47]

18. We recognize that defending litigation imposes costs, and that in some instances a State or local government may choose to grant an application rather than incur those costs. At the same time, an overly broad tolling regime would risk countenancing delays under circumstances where they would not be reasonable. Moreover, it is impractical to create in advance a comprehensive list of circumstances that would or would not reasonably merit delay. Therefore, any automatic tolling regime must necessarily balance the risks of engendering litigation and condoning excessive delay. In the *Ruling*, the Commission determined that in the common case of an incomplete application that is discovered within 30 days, a delay should be presumed reasonable and the review period should be automatically tolled in order to avoid unnecessary litigation. Where the delay is due to other causes or the incompleteness is identified after more than 30 days, case-by-case consideration, in the first instance by the parties, and then by the court if necessary, is more prudent. Nothing in the record on reconsideration causes us to revisit this balance.

19. With respect to Petitioners' assertion that the Commission did not seek or receive sufficient information on which to base its decision to limit the period for automatic tolling, we find that the record demonstrates otherwise, and that the *Ruling* reflects this. Various government entities raised the issue that rigid timeframes do not account for incomplete filings.[48] MetroPCS proposed a three-day review period for a State or local government to determine whether an application is complete, a proposal that CTIA supported.[49] Later, PCIA proposed a 10-day period for tolling,[50] and then a 10-business-day

[46] *Ruling*, 24 FCC Rcd at 14008-09 ¶ 38.

[47] *See id*. at 14008-09 ¶ 39.

[48] *See id*. at 14014 ¶ 52 n.155.

[49] *See id.* at 14014 ¶ 52, nn. 156-157.

[50] *See Ex Parte* Letter from Michael D. Saperstein, Jr., Esq., Public Policy Analyst, PCIA – The Wireless Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 08-165, Att. at 7 (filed Dec. 5, 2008).

period.[51] While the specific length of 30 days was not proposed in the record, the Commission reviewed state statutes that were submitted into the record in selecting that time period, concluding that 30 days "gives State and local governments sufficient time for reviewing applications for completeness, while protecting applicants from a last minute decision that applications should be denied as incomplete."[52] To the extent Petitioners are concerned that any lack of comment impeded the Commission from taking into account the ramifications of the 30-day period for tolling,[53] our review of the issues raised here addresses this concern.

C. Other Issues

20. Several commenters raise issues that are beyond the scope of the Petition. San Antonio asserts that "*all* of the *CTIA Ruling's* interpretations of Section 332(c)(7)(B)(i), (ii) and (v) exceed the Commission's authority. . ." and that the decision is "a rulemaking in disguise" that "fails to comply with the Regulatory Flexibility Act."[54] Los Angeles claims that the 90-day period for collocation applications is too short.[55] Because these matters are outside the scope of the Petition, they should have been raised through timely Petitions for Reconsideration, and not for the first time in comments on Petitioners' Petition for Reconsideration. Accordingly, we do not consider them here.

21. In Comments to the Petition, Albuquerque raises a new issue, requesting that the Commission "clarify" that the 90- or 150-day review period is reset to zero whenever a State or local government receives new material submitted to remedy a facially deficient application.[56] The *Ruling*, however, expressly states that where an application is found to be incomplete as filed during the 30-day review period, "the timeframes do not include the time that applicants take to respond to State and local governments' requests for additional information."[57] This means that when the information is requested, the clock stops, and when the applicant provides the additional information, the clock resumes (thereby reflecting the passage of time equivalent to the time from the initial filing of the siting application to the date that the additional information was requested). Because Albuquerque's request for clarification proposes – for the first time after the deadline for filing petitions for reconsideration – to alter this approach, the proposal is, in fact, an untimely request for reconsideration of this part of our decision. In any event, we are not persuaded that resuming the clock where it left off is inappropriate in this situation. The time spent determining that the application is incomplete is time spent reviewing the application, and therefore reasonably counts toward the 90 or 150 days.

22. IMLA argues that Congress's use of the term "final action" in Section 332(c)(7)(B)(v), and the absence of "final" in the requirement in Section 332(c)(7)(B)(ii) that the State or local government "shall act," create a distinction between the trigger for a lawsuit based on State or local government action and the trigger for a lawsuit based on a failure to act. IMLA contends that, accordingly, the Commission must modify the *Ruling* to expressly provide that the 90- and 150-day time periods only apply to initial zoning actions, and not to the time period from the initial decision until completion of final action on an administrative appeal.[58] In addition to arguing that IMLA's request is beyond the scope of the issues

[51] *See Ex Parte* Letter from Michael Fitch, Esq., President and CEO, PCIA – The Wireless Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 08-165, at 3-4 (filed Oct. 23, 2009).

[52] *Ruling*, 24 FCC Rcd at 14015 ¶ 53.

[53] *See* Petitioners Reply Comments at 4.

[54] San Antonio Comments at 2.

[55] Los Angeles Comments at 3.

[56] Albuquerque Comments at 2.

[57] *Ruling*, 24 FCC Rcd at 14014 ¶ 52.

[58] *See* IMLA Comments at 7-10.

raised in the Petition for Reconsideration, CTIA contends that the statutory reference to "final action" is irrelevant when there has been no action.[59] IMLA's request is outside the scope of the Petition, and we decline to render the ruling that IMLA requests. Given the many variations that are possible in local procedures and factual circumstances, it is appropriate for the court to determine whether the decisionmaking body has failed to act within the specified timeframe and whether the presumptive timeframe for action is reasonable in each case.

IV. CONCLUSION

23. We conclude that in interpreting Section 332(c)(7), the Commission has the authority to define a 30-day period after an application for wireless facility siting is filed during which a State or local government may toll the presumptive deadline for review due to the application's incompleteness, and that this 30-day period is both reasonable and supported by the record. We therefore deny the Petition.

V. ORDERING CLAUSE

24. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 4(j), 303(r), 332(c)(7), and 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 332(c)(7), 405(a), and Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Petition for Reconsideration or Clarification filed by the National Association of Telecommunications Officers and Advisors, the United States Conference of Mayors, the National League of Cities, the National Association of Counties, and the American Planning Association IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[59] *See* CTIA Reply Comments at 9-10.

APPENDIX

List of Commenters

Oppositions and Comments

Charter Township of Waterford, Michigan (Waterford)
City of Albuquerque, New Mexico (Albuquerque)
City of Centerville, Minnesota, Member of the North Metro Telecommunications Commission (Centerville)
City of Livonia, Michigan (Livonia)
City of Los Angeles, California (Los Angeles)
City of Mentor, Ohio (Mentor)
City of Philadelphia, Pennsylvania (Philadelphia)
City of Portland, Oregon (Portland)
City of San Antonio, Texas (San Antonio)
CTIA – The Wireless Association (CTIA)
Greater Metro Telecommunications Consortium (GMTC)
International Municipal Lawyers Association (IMLA)
PCIA – The Wireless Infrastructure Association (PCIA)
T-Mobile USA, Inc. (T-Mobile)
Verizon Wireless
Village of Hoffman Estates, Illinois (Hoffman Estates)

Reply Comments

CTIA
Fairfax County, Virginia (Fairfax)
National Association of Telecommunications Officers and Advisors, The United States Conference of Mayors, National League of Cities, National Association of Counties, American Planning Association, and the City of Laredo, Texas (Petitioners)
PCIA

Late-Filed Reply Comment

Kiku Lani Iwata